

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ARTHUR ROSE, Plaintiff, vs. DONALD C. WINTER, Secretary, Department of the Navy, Defendant.	MEMORANDUM DECISION AND ORDER Case No: 1:06-cv-129 TC District Judge Tena Campbell Magistrate Judge David Nuffer
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On September 27, 2007, the court issued an Order to Show Cause¹ because the complaint in this matter had not been properly served upon the Defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure. Plaintiff Arthur Rose responded² to the Order to Show Cause and provided an Affidavit of Process Server indicating that a copy of the Complaint and Order of Reference were delivered to an Administrative Assistant in the Office of General Counsel at the Department of the Navy.³ However, this is not effective service of process for this case under Rule 4(I).

“Effectuation of service is a precondition to suit,”⁴ and “[t]he plaintiff has the burden of

¹Docket no. 8.

²Docket no. 9.

³*Id.* at 2.

⁴[*Jenkins v. City of Topeka*, 136 F.3d 1274, 1275 \(10th Cir. 1998\).](#)

establishing the validity of service.”⁵ Although Mr. Rose is proceeding *pro se*, he is still obligated to comply with the fundamental requirements of the Federal Rules of Civil Procedure,⁶ particularly with the jurisdictional requirement of service of initial process. Specifically, Mr. Rose must follow the requirements of Rule 4(I), which directs how to effect service of process on the United States, its Agencies, Corporations, Officers or Employees.⁷

⁵[*Allison v. Utah County Corp.*, 335 F.Supp.2d 1310, 1313 \(D. Utah 2004\).](#)

⁶[*Ogden v. San Juan County*, 32 F.3d 452, 455 \(10th Cir. 1994\).](#)

⁷ **Serving the United States, Its Agencies, Corporations, Officers, or Employees.**

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2)(A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States - whether or not the officer or employee is sued also in an official capacity - is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

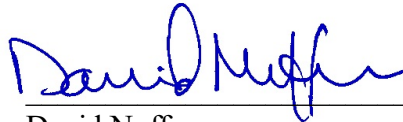
(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or

ORDER

IT IS HEREBY ORDERED that Plaintiff must effect service of process pursuant to Rule 4(I) of the Federal Rules of Civil Procedure on or before December 7, 2007, and must file proof of service of process on or before December 21, 2007. If Plaintiff does not comply with this order, the court will dismiss the case for failure to prosecute.

October 5, 2007.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

employee of the United States sued in an individual capacity.

Fed. R. Civ. P. 4(i). *See also* [Fed. R. Civ. P. 4\(a\)](#) - (b) (describing procedure and requirements as to form and issuance of summons).